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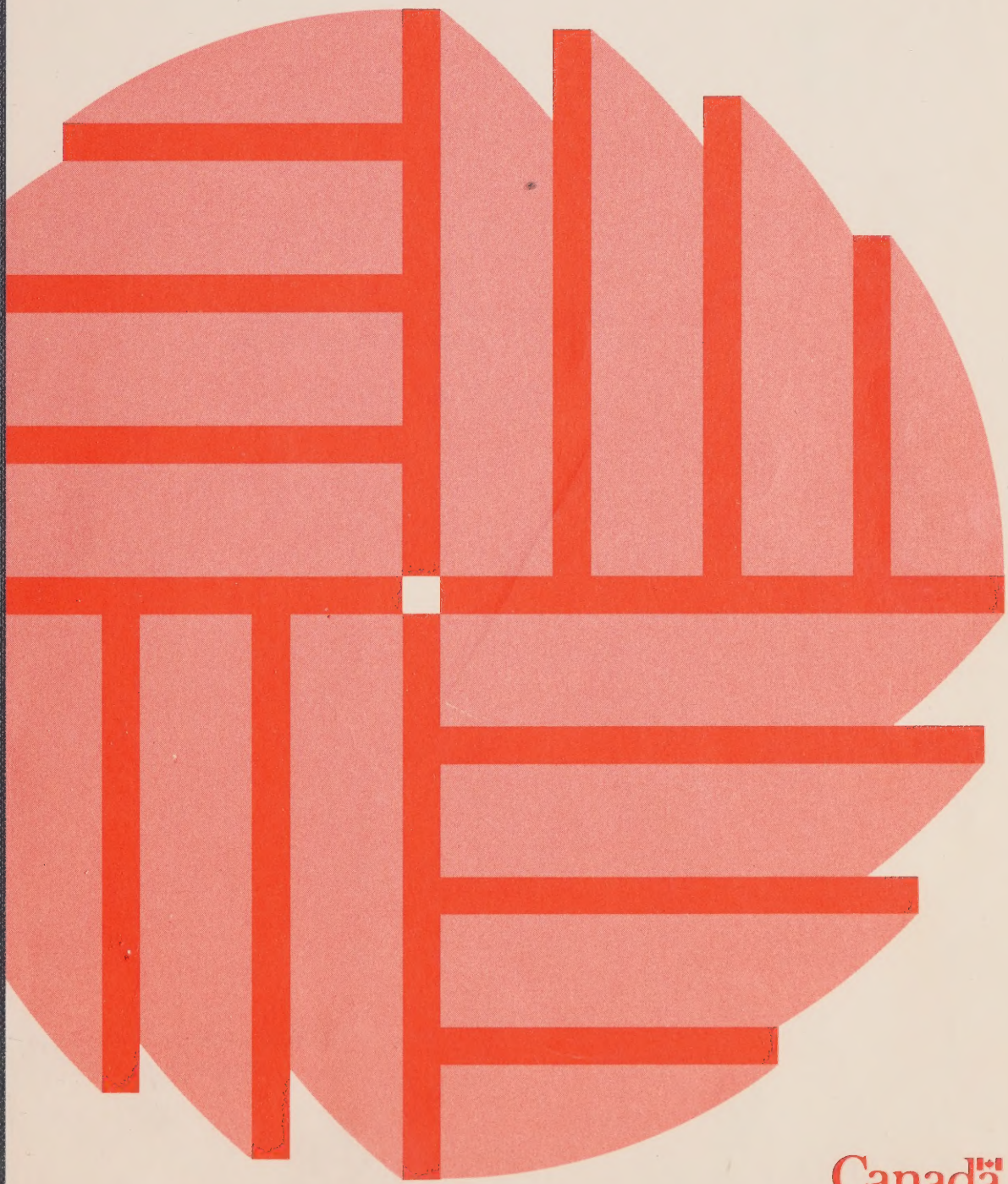

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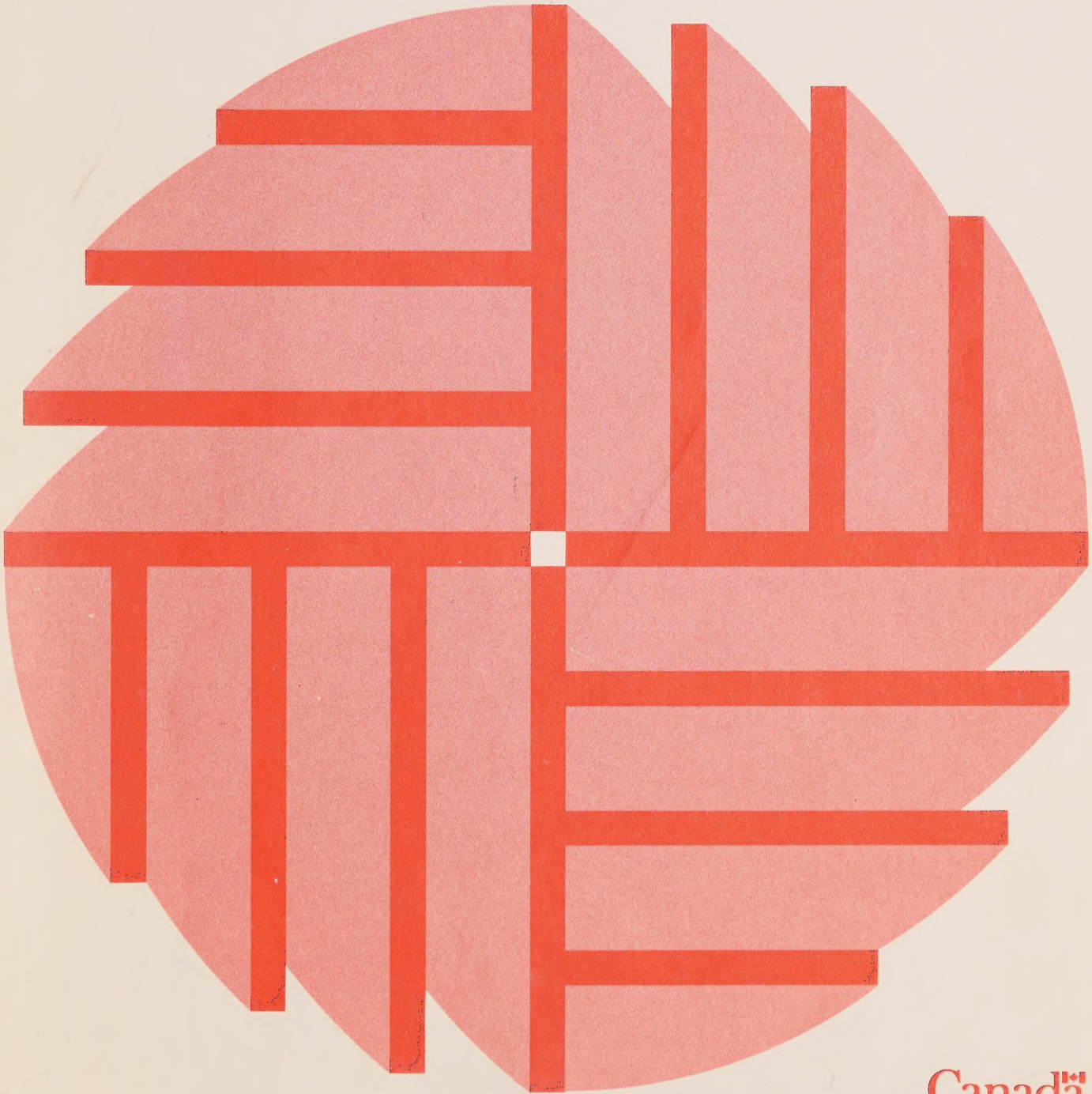

Canada

SUMMONS KNOCKIN' ON THE DOOR
(SO WE'RE PUTTING ON THE WRITS)

A Civil Law Primer

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Non-Criminal Courts Program

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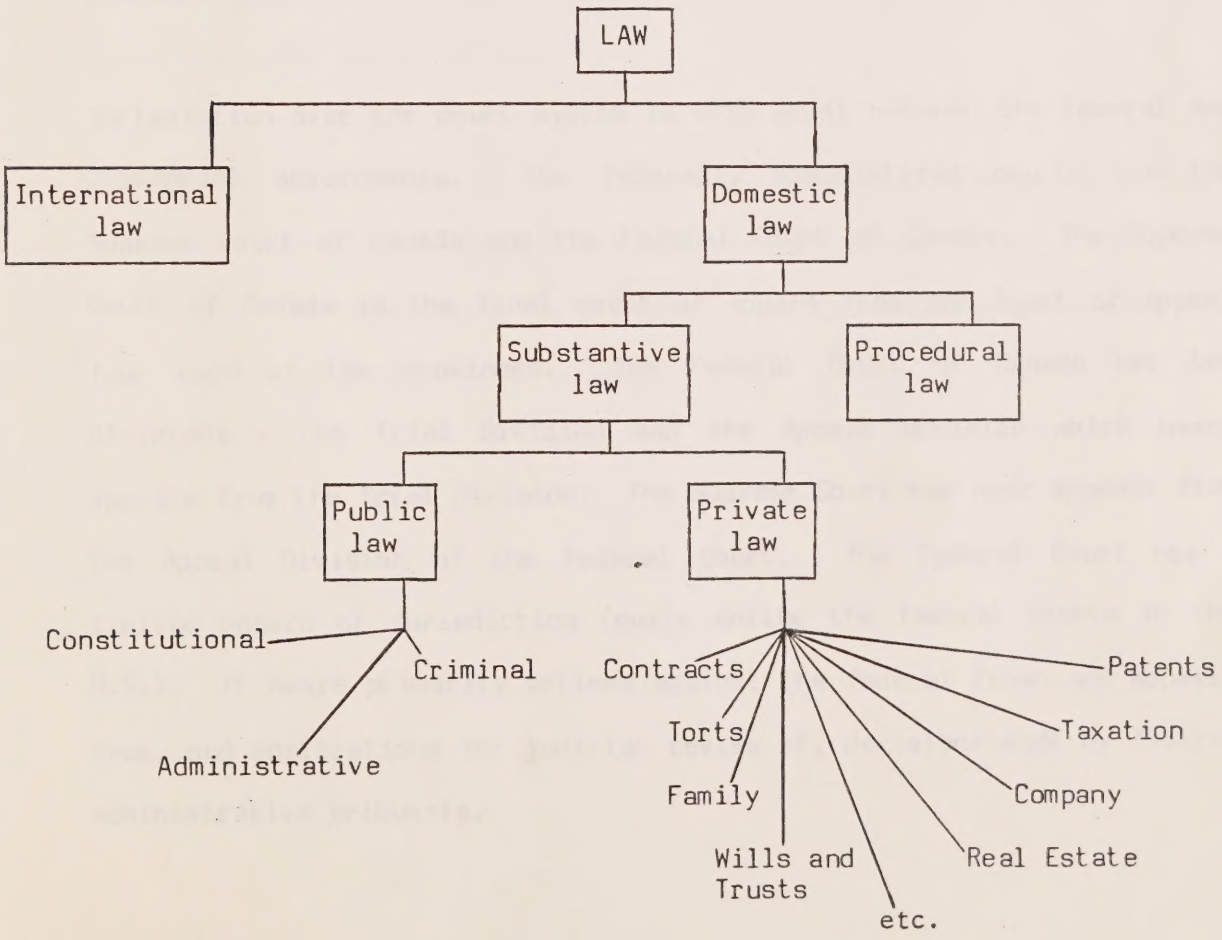
CONTENTS

1. INTRODUCTION

What is civil law?

Civil law has more than one commonly understood meaning. It may mean the legal system of civil law which governs Quebec, six of the United States and much of Europe. Alternatively, the term is used to describe private law, in contradistinction to criminal law. It is the latter meaning which is used here. Also included in the meaning for the purposes of this primer are private rights of the individual against the state derived from administrative and constitutional law.

The primary areas of private law are included in the chart below which represents the main divisions of law. The chart helps to indicate where civil (private) law fits in with the rest of the legal system.



The following pages briefly outline the civil court system and procedures, as well as certain areas of substantive civil law.

Constitutional Aspects

Jurisdiction to legislate on civil matters is split between the federal and provincial legislatures. The three major areas of civil law - contracts, torts and property - fall under the provinces' mandate by virtue of section 92(13) of the Constitution Acts, 1867 - 1982, which grants jurisdiction to the provinces over "Property and Civil Rights in the Province". Both levels of government have concurrent jurisdiction over corporations and split jurisdiction over taxation. However, bankruptcy and industrial property are matters of exclusive federal concern.

Jurisdiction over the court system is also split between the federal and provincial governments. The federally administered courts are the Supreme Court of Canada and the Federal Court of Canada. The Supreme Court of Canada is the final court of appeal from the Court of Appeal from each of the provinces. The Federal Court of Canada has two divisions - the Trial Division and the Appeal Division which hears appeals from the Trial Division. The Supreme Court may hear appeals from the Appeal Division of the Federal Court. The Federal Court has a limited sphere of jurisdiction (quite unlike the federal courts in the U.S.). It hears primarily actions against the federal Crown and appeals from, and applications for judicial review of, decisions made by federal administrative tribunals.

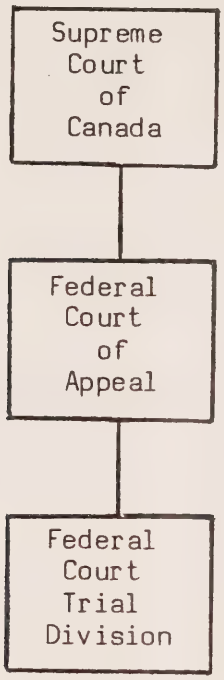
The superior, district and county courts in the provinces and territories are administered by the provinces and territories. But, section 96 of the Constitution Acts, 1867 - 1982 gives the federal government the power to appoint judges of these courts. These are colloquially known as "section 96 courts". The superior courts (called in some provinces Court of Queen's Bench) have unlimited jurisdiction to hear all matters. The county and district courts are restricted mainly by the maximum monetary claim that can be awarded.

The provincial or territorial courts - including the small claims courts - are administered by the provinces and the judges are appointed by the provinces. They are inferior courts of record and are consequently restricted in the matters which they have jurisdiction to hear. For instance, provincial courts may not hear cases of defamation or actions which deal with title to land.

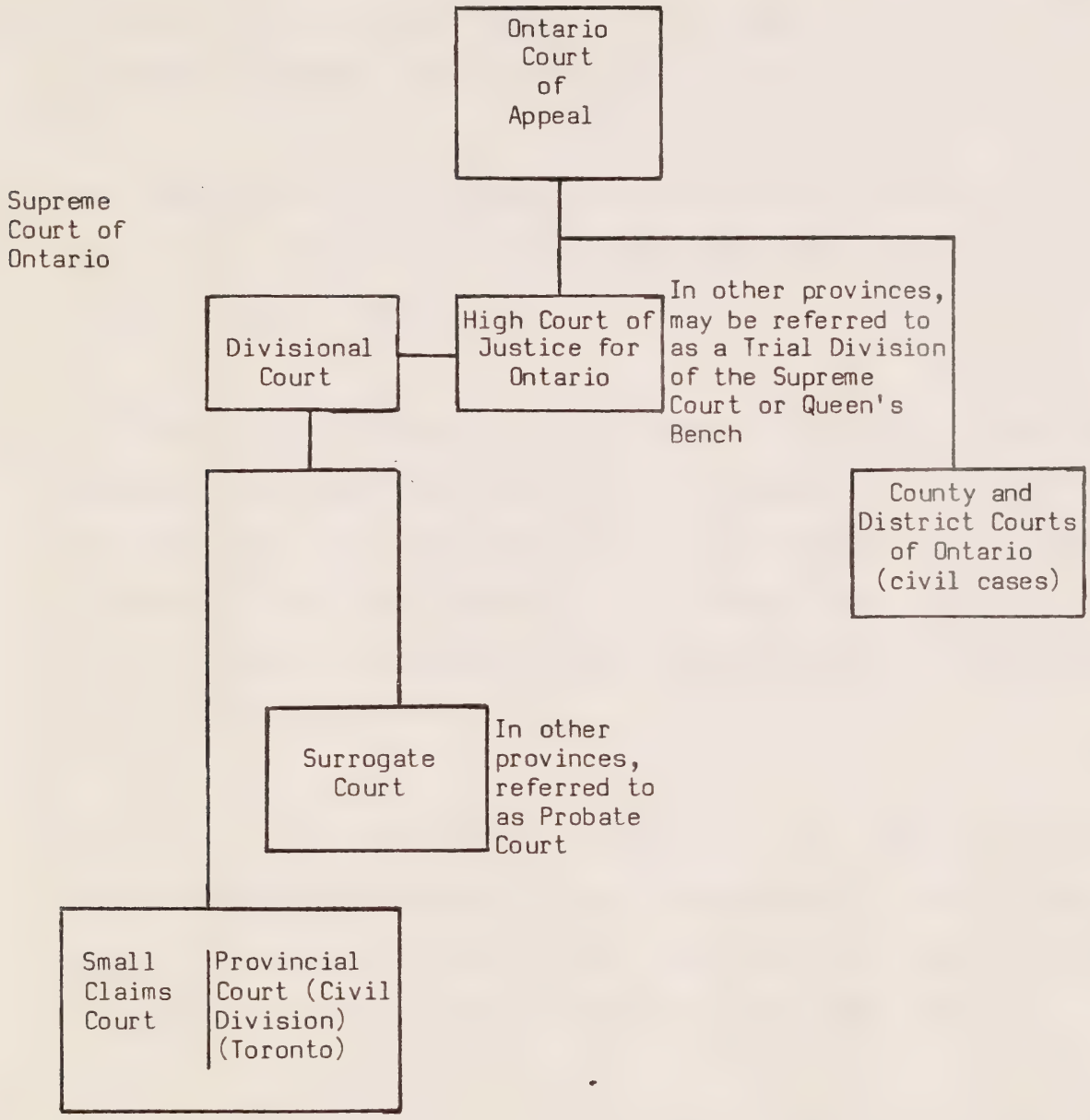
The jurisdiction of courts to hear certain matters should not be confused with the power of a government to legislate in those areas. Section 96 courts may hear cases under both federal and provincial legislation. The same is also true of inferior courts.

2. THE COURT SYSTEM IN CANADA

Federal civil courts - established by federal statutes



Provincial civil courts (excluding family courts) using Ontario as an example:
- established by provincial statutes
- appeal to the Supreme Court of Canada



Note: Quebec and Nova Scotia also have Municipal Courts with such jurisdiction as established in municipal by-laws.

* Lines indicate route of appeal

3. PROCEDURE

The plaintiff (aggrieved party) selects the appropriate court, depending on the courts' legal and monetary jurisdiction to hear the case, and commences the action by filing a writ of summons (usual name of the originating document) and delivering a copy to the defendant.

The defendant files an appearance notice in which he acknowledges receipt of the writ. If he fails to do so, the plaintiff can ask the court for a default judgement in his favour.

The parties then exchange pleadings within the strict time limits and rules set out in the rules of court. These documents set out the issues and the facts. The plaintiff delivers his statement of claim to the defendant, who then prepares his statement of defence and/or counterclaim. The plaintiff may then deliver a reply or a defence to the counterclaim.

Each party has the right to "discovery", i.e., disclosure of the documents, facts and evidence on which the other party intends to rely at trial. The parties may orally examine each other under oath, may inspect exhibits, and may order medical examinations where appropriate.

The parties then prepare for trial, issuing subpoenas upon witnesses, researching the case and making any necessary motions (e.g. to amend the pleadings). The plaintiff delivers a certificate of readiness to the defendant to which he responds with a similar form and the action is set

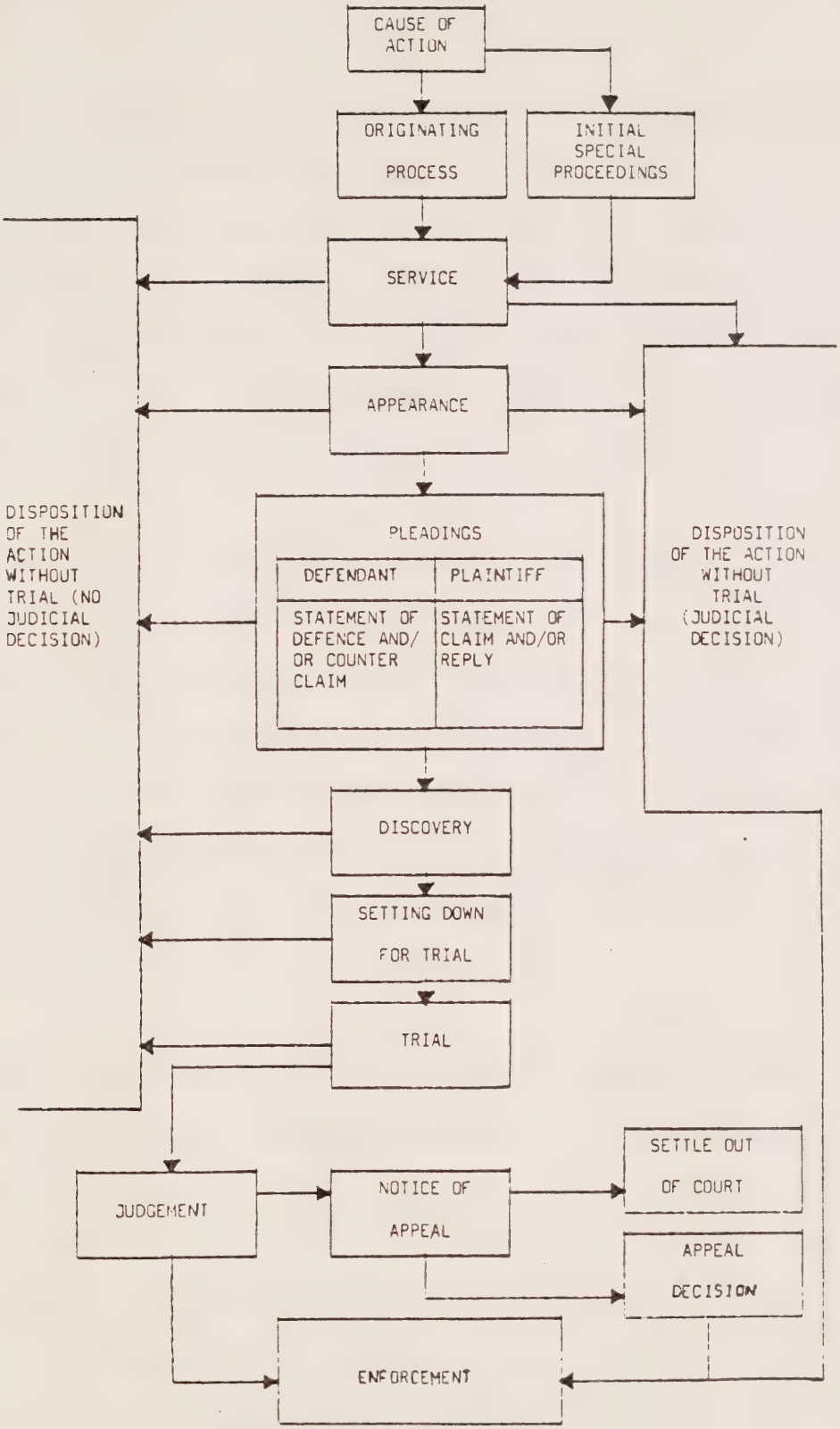
down for trial. An action is often disposed of without a trial where the parties reach a settlement, or the case is dismissed for lack of reasonable cause (the plaintiff has no valid claim) or for want of prosecution (the plaintiff fails to proceed).

The trial is usually held before a judge alone although either party may opt for a judge and jury in some cases. Defamation, malicious prosecution and false imprisonment cases may be heard by a jury in most provinces. In Alberta, juries may also hear actions for the recovery of real property and claims in contract or tort over $1,000.

After the court arrives at a decision, the losing party may decide that a higher court might decide the case differently. He then appeals to the next level in the court system. Either party has an absolute right to appeal up to the Court of Appeal, but may appeal from the Court of Appeal to the Supreme Court of Canada only with leave. Either the Court of Appeal or Supreme Court of Canada may grant leave to appeal, and it is usually only granted where the matter at issue is very important or the law in the area is unclear and needs clarifying.

General Chart and Jurisdictional Procedural Outlines

GENERAL MODEL OF CIVIL PROCESS IN CANADA



4. REMEDIES

Once a plaintiff has followed the appropriate procedure in court and has established a substantive right, the court is left to decide the nature and scope of the relief to be given. The remedy sought is set out by the plaintiff in the pleadings. There are four major categories of remedies and a plaintiff may ask for one or more remedies. The categories include: 1. Restitutionary remedies 2. Coercive remedies 3. Declaratory judgement 4. Damages.

A restitutional remedy may or may not involve a money recovery. Its basis is the concept of unjust enrichment. The award is, therefore, measured by the defendant's gains rather than by the plaintiff's losses. For example, if D misappropriates money from P and invests it in shares, D will be held liable to make restitution of the shares or their value even though they may have increased in value and exceed the amount of money he took from P. D has been unjustly enriched and the court will not allow him to profit from his own wrong.

Coercive remedies include the equitable remedies of injunction - where the court commands the defendant to act or to avoid acting in a certain way (e.g. writs of mandamus, prohibition and quo warranto) - and specific performance which forces the defendant to perform his contract. The granting of these remedies is at the discretion of the court and depends on several factors including the behaviour of the parties and the balance of any hardship which will ensue as a result of the award. Violation of these orders is punishable in two ways: by committal for contempt of court or by a fine.

In certain cases, a plaintiff may seek as a remedy a declaratory judgement, i.e., a declaration of rights. Usually these declarations are granted incidentally to the granting of some other remedy such as damages, injunction or specific performance. Declaratory relief is often sought in connection with the interpretation of statutes and other instruments. It provides a means of letting a plaintiff know what the law is or what it means or whether it is within the jurisdiction of Parliament or the legislature which passed it.

The most common type of remedy sought is damages. This is a money remedy aimed at compensating the plaintiff for his losses. Damages, however, are not always wholly compensatory. For example, the court may choose to award exemplary or punitive damages which are sums awarded as punishment or deterrent because of the particularly aggravated misconduct of the defendant. The court may also award "nominal" damages. This is a small amount awarded to a plaintiff to affirm that there was an infraction of a legal right but the loss suffered by the plaintiff is considered minimal. As well, there are some elements of actual loss that are seldom covered by the damages award (eg. non-pecuniary losses such as mental suffering although nervous shock that leads to actual physical suffering may be compensable).

In personal injury claims, damages are divided into general and special damages. General damages represent compensation for pain and suffering and possible loss of earning power in the future. Special damages consist of out-of-pocket expenses and loss of earnings incurred up to the date of trial or hearing.

With regards to contracts, when one person requests the services of another and obtains performance, the law implies a promise to pay a reasonable price for the services. That is, it provides the party who has performed with the remedy of quantum meruit. The law permits a quantum meruit remedy only in the absence of an agreed price stated in an existing contract.

5. CONTRACTS

A contract is an agreement between two or more persons to do or to abstain from doing something. The essential elements of a contract include offer, acceptance and consideration. One party offers the terms of a potential contract to another (Would you like to buy my car for $2,000?), who may decide to accept the deal (Yes, I'll pay you as soon as I can get to the bank). Consideration is the "price" of the contract (here $2,000). Alternatively, if the contract involves only mutual promises, without the exchange or money or any sacrifices (I'll accompany you to the store if you come to the bank with me), the contract can be made binding only by the use of a seal.

A void contract is one which has no legal effect, as if it had never been made. A voidable contract may be enforced or rejected at the option of one of the parties (e.g. a contract with a minor). An unenforceable contract cannot be enforced in court because of some important defect in the contract. An illegal contract is one that is forbidden by law.

A binding contract requires the free consent of competent parties. Not every one is considered competent to make a contract. Most contracts are unenforceable against minors, mental incompetents and drunken persons. Contracts made by minors for the necessities of life are, however, valid and enforceable. The consent by the parties to a contract must be genuine. Contracts made under duress or undue influence are voidable at the option of the victim. Furthermore, a contract is vitiated by mistake if the contract does not express the actual intentions of the parties.

The issues raised in court include whether a contract was formed, whether it is enforceable, whether one party may be excused from performing his side of the bargain, what remedies are available for non-performance by the other party, and the effect of contracts on third parties.

The chief excuses for non-performance of contracts are mistake, unfairness and public policy. By public policy it is meant, is it in the public interest to enforce this contract? In other words, should the courts lend their aid to enforcing unfair, illegal or immoral contracts?

The principal types of contracts into which people enter (and subsequently dispute in the courts) include contracts for the sale of goods, loans, insurance, sale of land, landlord and tenant agreements and partnerships.

6. TORTS

A tort is a civil wrong done by one person against another, for which the victim may receive compensation by suing in the civil courts. Unlike criminal law, the state does not get involved to punish the person committing the wrongful act. The plaintiff is compensated for his loss caused by the defendant's actions. The amount of compensation to which the plaintiff is entitled is determined by the judge after he has found that the defendant was at fault. If the fault was only partially that of the defendant and the plaintiff contributed to the problem, then the judge will award only that portion of the loss that was caused by the defendant.

The law of torts may be divided into intentional torts, negligence and strict liability. Strict liability is liability without fault, which the defendant assumes because of the nature of the activities in which he is engaged. For instance, the manufacturer of an inherently dangerous product is strictly liable for loss caused by defects in the product. The law of negligence requires that you take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure someone. What is reasonable depends on the circumstances in the situation. The standard is the foresight and caution of the ordinary, prudent man. However, persons professing special skill (doctors, lawyers, etc.) must use such skill as is usual among members of that profession. Falling short of that standard invites liability for damage caused.

Intentional torts include assault and battery (damage to the plaintiff's person), trespass to land and trespass to goods, conversion and detinue (the last three relate to misappropriation of goods). Another important intentional tort is defamation, i.e., untruthful statements about a person which injure his reputation.

In a tort action the plaintiff must prove that the wrong was committed by the defendant and that loss resulted from the wrongful act. The defendant may then attempt to prove an excuse or contributory negligence on the part of the plaintiff in order to reduce his liability.

7. SUCCESSION AND ADMINISTRATION OF ESTATES

People are entitled to leave their property to whomever they wish after their death. They do this by drawing up a will according to the requirements of the province in which they live. In most provinces, to be valid, a will must be signed by the testator (person disposing of his property) and by two witnesses. In some provinces, a holograph will (written out in the testator's handwriting) is valid without the signatures of two witnesses. To make a valid will, the testator must be of age and mentally competent at the time of making the will.

A will takes effect only after the testator's death. It is always revocable and a declaration in a will that it is irrevocable is of no effect. A will can be revoked by the testator by destroying it intentionally or by making a subsequent will. However, a contract to make a disposition by will is valid and enforceable. The subsequent marriage of the testator will automatically revoke his will unless it was made expressly in contemplation of the marriage.

When the testator dies, the will is "probated" in the Probate or Surrogate Court: the court ensures that the will was validly made. Problems in interpreting the provisions of the will are heard, not in probate court, but in a higher court. However, the probate court usually finds the will valid and there are no problems in interpretation.

If a person has no will at death, he/she dies "intestate" and the government of the province then provides a scheme of succession. For instance, in Ontario, if a person dies intestate leaving a spouse and no children, the entire estate passes to the spouse.

People often create trusts to maintain their spouses or children after their death. (Trusts can also be set up during the lifetime of the "settlor".) The settlor appoints a trustee or trustees to administer the trust on behalf of the beneficiaries. (A makes a will leaving property to B in trust for C and D: A is the settlor, B the trustee, C and D are the beneficiaries.)

8. ADMINISTRATIVE LAW

Today's government exercises many important regulatory functions, usually by its administrative tribunals. Administrative law is concerned with the relationship between the individual and the government as regulator. Many decisions made by administrative tribunals are of enormous importance to the individuals affected by those decisions. For instance, suspension of its license to operate may destroy a business, and access to legal aid may clear the way for an individual to vindicate his rights in court.

An administrative tribunal is required to make its decisions in accordance with the standards set out in the enabling statute which establishes the tribunal. Failure to do so may mean reversal of the decisions by a court. Furthermore, decisions must be made in good faith and within the confines of the law of the land, including judge-made law. Most decisions may be challenged if they are made in bad faith, do not conform to the requirements of the enabling statute, demonstrate an error of law, or do not meet the standards of "natural justice".

According to the rules of natural justice, parties to a dispute before a tribunal have the right to be heard. This means that there must be a fair hearing, and that each party has a right to receive notice of the hearing, to rebut the evidence presented, to cross-examine witnesses and to have legal representation. Furthermore, the parties are entitled to a decision made free of bias.

Applications for judicial review of decisions made by federal administrative tribunals are heard in the Federal Court of Canada. The superior courts of the provinces hear applications to review decisions of provincial tribunals.

9. COMPANY LAW

The business corporation or limited company is the dominant feature of the modern business world. A corporation is a "person" in the eyes of the law, i.e., a separate legal entity. A separate corporate existence can best be understood when compared with a partnership. Partners are individually liable for the debts of the partnership to the limit of their personal assets. A corporation is liable for its own debts, but its shareholders are liable only to the amount of the price of the shares they have purchased from the corporation. This limited liability, along with a corporation's continuous existence (death or bankruptcy of a partner can dissolve a partnership), and the separation of ownership and management are important features of incorporation.

It must be noted, however, that a legal system which has granted recognition to a corporation may just as easily withdraw it whenever necessary to protect interests more important. The courts will not hesitate to "lift the corporate veil" in order to hold the individuals controlling the corporation responsible for their acts.

There are basically three methods to incorporate a company: 1) by special Act, federal or provincial; 2) under provincial company legislation either by letters patent or by registration; or, 3) under the Canada Business Corporations Act, R.S.C. 1974-75-76, c.C-33. Special acts are usually used to incorporate companies for large projects (e.g., Bell

Canada Ltd.). In Manitoba, Quebec, New Brunswick and Prince Edward Island, the incorporating document is called the letters patent, issued under the authority of the Crown's representative in each jurisdiction. In British Columbia, Saskatchewan, Alberta, Nova Scotia, Newfoundland, and the territories, companies are formed under the registration system. General statutes in each jurisdiction require the applicants to register a document that sets out the fundamental terms of their venture, called a "memorandum of association".

The Canada Business Corporations Act adopted Ontario's procedures regarding incorporation. These procedures include signing and delivering "articles of incorporation" to the government office but the charter obtained from the government is called a "certificate of incorporation".

Whether incorporation is to be taken under the Federal or Provincial Act depends on the nature of the business to be conducted. If the business is intended to be carried on in one province only, with no branches in any other province, incorporation would be under the appropriate provincial act as the province has jurisdiction in such cases. But if the company intends to operate in more than one province, e.g., a steamship line, or a manufacturing operation intending to establish offices in other provinces, then incorporation would be under the Federal Act. Instead of incorporating federally, a company may incorporate provincially and merely obtain a licence to operate in another province if it later chooses to do so.

Companies may also be categorized into public or private companies. Private companies are distinguished from public companies in that the number of shareholders is limited, the right to transfer its shares is restricted and any invitation to the public to subscribe for shares or other securities is prohibited.

All corporations statutes, except the federal act, require charters to contain a clause setting out a corporation's objects. Whether or not a contract by which the corporation exceeds its objects is void, the making of such a contract is misconduct; a shareholder may bring an action against the officers of the company responsible for the breach of its objects, and, where possible, ask for an injunction to restrain their misconduct. (In the case of a very great breach, he may ask to have the company wound up.)

"Insider Trading" denotes purchases or sales of securities of a company by or on behalf of an "insider", (a person whose relationship to the company is such that he is likely to have access to relevant material information concerning the company not known to the general public). Insider trading is regulated by securities legislation which usually requires directors and officers to disclose to the public their own shareholdings and trading in the company's securities as well as material information about the company's finances and operations. Insiders are prohibited from trading in their company's securities on the basis of important information withheld from the public.

10. TAXATION

Under the Canadian constitution, both the federal Parliament and the provincial legislatures have the power to, and do, impose income taxes. By arrangement with many of the provinces, Revenue Canada, Taxation, collects provincial income taxes as well as federal income taxes, in those provinces.

Generally, income tax procedure begins with the taxpayer filing a return disclosing income and computing the tax payable. The return is reviewed by the Department. A notice of assessment is then issued to each taxpayer who has filed a return and, in some cases, notices of reassessment are subsequently issued. The taxpayer must pay any tax owing by him, otherwise, the Department will take steps to collect unpaid taxes. The Department will also refund to a taxpayer any tax that he has overpaid. Where the tax payments are in arrears, interest will be charged. In addition, where appropriate, penalties (civil or criminal or both) will be imposed on a taxpayer for failing to comply with the requirements of the Income Tax Act.

Taxpayers are required to keep proper records of their transactions that are relevant for tax purposes. To ensure compliance with the Act, the Department has broad powers to inspect, and, if necessary, to seize a taxpayer's records.

Where a taxpayer is dissatisfied with a notice of assessment or reassessment, he has a right to file a notice of objection. If the taxpayer still is not satisfied, he may appeal to the Tax Review Board. An appeal to the Federal Court of Canada can be made by either the taxpayer or Revenue Canada from the decision of the Tax Review Board. It is also possible to bypass the Tax Review Board and go directly to the Trial Division of the Federal Court. Appeals can then be made to the Federal Court of Appeal and, if allowed, to the Supreme Court of Canada.

The Act provides that a taxpayer (individual or corporation) who is resident in Canada is subject to Canadian tax on his world income for each taxation year. A non-resident is taxed by Canada, in general, only on his income earned within Canada or from Canada. Special rules apply for any taxation year in which an individual changes his country of residence from or to Canada. When a taxpayer ceases to be resident in Canada, some of his accrued capital gains and losses are considered to be realized at that time and must be included in computing his Canadian tax for that year. The meaning of "resident" is, therefore, an important issue and the subject of many cases.

Equally fundamental as the concept of residence is the concept of "income". The word is nowhere defined in the Act but the main characteristics of the concept of income for tax purposes can be derived from the Act and from case law. Section 3 provides a framework which pulls together the sections of the Act that define income from various sources (e.g., Employment Income, Income from Business, Income from Property, Capital Gains, and Other Income) and allow for different treatment of each type of income.

However, income is not easily categorized. For example, the profit from a sale of land could be classified as a capital gain or as income from a business depending on whether the sale was an isolated transaction, or whether the taxpayer frequently bought and sold land at a profit. The taxpayer's intention and the nature of the asset sold are also among the several factors the courts consider to determine what kind of income has been earned.

11. INTELLECTUAL PROPERTY

In Canada, a person who invents a new product, uses a special word, design or other symbol to identify his product, creates a new industrial design, or creates a literary or artistic work, is usually granted the exclusive right to its use for a certain number of years. Intellectual property includes patents, trade marks, industrial designs and copyrights and is within the exclusive jurisdiction of the federal government. The federal statutes involved are the Patent Act, the Trade Marks Act, the Industrial Design Act, and the Copyright Act. The administration of these laws is vested in the Department of Consumer and Corporate Affairs Canada, specifically, the Bureau of Corporate Affairs. The Bureau consists of the Patent, Trade Marks, Copyright and Industrial Design Office.

Patents

A patent is a grant made by the federal government, under the Patent Act, R.S.C. 1970, c. P-4, to an inventor, giving him the sole right to make, use, or sell his "invention" in Canada for a period of seventeen years. Application for a patent is made to the Commissioner of Patents and, if approved, must meet all the requirements of the Patent Act and the Patent Rules. For example, the invention must not have been used publicly or sold in Canada for more than two years before the application is filed, or have been published anywhere in the world more than two years previously.

Once an application for a patent has been filed, a careful examination of the product will be made by a patent examiner employed by the Patent Office. If someone else had already applied for a patent for the same invention, conflict proceedings must be conducted to determine who invented it first. Rejection of an application may be appealed to the Federal and Supreme Courts of Canada.

Once a person has been granted a patent, he may sue in court anyone else who exploits his invention in Canada or imports the product from abroad. The court may award the patentee damages as compensation and issue an injunction restraining the further manufacture or sale of the invention.

A person who is working on an invention and intends to apply for a patent but is afraid that someone may rob him of his idea can file a "caveat" in the patent office. A caveat is a description of the invention, as far as it has been completed, and it is preserved in secret until the patent is obtained. As for the term "patent pending", this has no legal significance. It merely serves to warn any other party who may be considering the manufacture of a similar good that an application for a patent has already been made.

Trade Marks

A trade mark is a word, design, symbol or combination thereof, that a person or firm uses to distinguish its goods or services from those of others. It may also be a "distinguishing guise", i.e., a distinctive way of shaping or packaging goods. Once the right to a trade mark has been established by use, an application for registration may be made to the Registrar of Trade Marks. Protection against infringement can only be obtained after registration. The Trade Marks office checks the application to ensure that the mark does not resemble one registered earlier for the same type of goods or services; that it does not fall within one of the prohibited classes; or that it is not otherwise objectionable (e.g., national flags and emblems or scandalous obscene words, etc., Trade Marks Act, R.S.C. 1970, c. T-10, s. 9).

After the Trade Marks Office has completed its check, the trade mark is advertised in the Trade Marks Journal so that anyone who believes that his trade mark is being infringed may oppose registration. If after one month there is no opposition or if it is overruled, the mark is registered. The registration then remains in force for 15 years, and gives the owner the exclusive right to its use throughout Canada with regard to the goods or services for which it was registered.

Industrial Designs

The Industrial Design Act, R.S.C. 1970, c. I-8, allows a person or a firm with a product having a particular shape, pattern or ornamentation to obtain exclusive right to that outward appearance for five years by

registering it as an industrial design. An industrial design will be registered at the Patent Office provided it is not confusingly similar to another already registered. If a design has already been made public in Canada, it can be registered any time up to one year from that date. A registered industrial design may be licenced or assigned and infringement is committed by anyone who, without licence or assignment, applies or attaches the registered design to any article.

Coyprights

Under the Copyright Act, every original literary, dramatic, musical or artistic work, as soon as it is created, is automatically protected by copyright. The originator or author of such work has the sole right to produce or reproduce it in any material form and to perform the work in public in Canada. The term of copyright for written works is the life of the author plus 50 years; for sound recordings and photographs, it is from 50 years from the date of the original plate.

Copyright gives only the right to prevent others from copying and if a defendant can prove he did not make undue use of the plaintiff's work, he does not infringe. When a copyright has been infringed, the owner may be entitled to an injunction, damages, or statement of account.

While it is not a statutory requirement to register a copyright, it is advantageous because it provides "prima facie" (i.e., rebuttable) evidence of copyright ownership.

12. BANKRUPTCY

Bankruptcy is a federal matter governed by The Bankruptcy Act, R.S.C. 1970, c. B-3. The Act distinguishes between bankruptcy and insolvency. Insolvency is a state of financial affairs that usually precedes bankruptcy. The Act generally defines an insolvent person as a person "whose liabilities to creditors ... amount to one thousand dollars" and is unable to meet his obligations as they become due. A bankrupt, by contrast, is defined as "a person who has made an assignment or against whom a receiving order has been made."

An official called the Superintendent of Bankruptcy is appointed to supervise the administration of all estates covered by the Act. After an investigation into the character and qualification of an applicant, he issues the licences and renewals of all trustees, and holds on deposit the guarantee bond which the trustee is required to furnish. He is also empowered to make any inspection or investigation of estates which he deems expedient and to receive and investigate complaints from any creditor on any specific estate.

Section 153(1) of the Act specifies the courts that are to have jurisdiction in bankruptcy proceedings - usually the supreme court of each province. Other sections deal with the authority of the courts, the powers of the court registrars, appeals, and legal costs.

Bankruptcy can be brought about in two ways, either voluntarily with the debtor making an assignment, or involuntarily by the making of a Receiving Order by the Court, following the filing of a petition. To succeed in the latter, the petitioning creditor(s) must prove that one or more "acts of bankruptcy" have been committed. There are ten acts of bankruptcy outlined in s.24(1) of the Act and they include the assignment by a debtor of property to a trustee for the benefit of his creditors.

An insolvent person or a bankrupt is allowed to make a proposal to his creditors for the settlement of his debts. Such a proposal, containing a scheme of arrangement or composition, must be lodged with a licenced trustee who will examine the person's financial affairs and then call a meeting of the creditors at which the proposal may be accepted or rejected. If the proposal is accepted, the trustee must then ask the court for its approval. After hearing the trustee's report on the debtor, and any creditors, the court will approve or reject the proposal. The acceptance of such a proposal constitutes an alternative to bankruptcy proceedings.

The Act provides that the official receiver is required to examine the bankrupt under oath as to his conduct, the causes of his bankruptcy and the disposition of his property. He then prepares a report with a copy going to the Superintendent, the trustee and the court.

The divisible assets of a bankrupt comprise all property, wherever situate, belonging to the bankrupt or acquired by him after the bankruptcy but before his discharge. It does not, however, include any

property held by him in trust for any other person or any property which is exempt from seizure or execution under provincial law. Section 107 of the Act sets out in detail the scale of priority to be used in distributing the proceeds of the estate.

The discharge of the bankrupt is the step which normally follows the adjudication of bankruptcy and the administration of his estate. By it the debtor is released from the obligation of all his debt (except those specified in the Act) which were or might be proved in the proceedings, so that they are no longer a charge upon him. The making of a receiving order against, or an assignment by, any person except a corporation operates as an application for discharge unless the bankrupt waives this right. A corporation may not apply for a discharge unless the claims of its creditors are paid in full.

13. CONSTITUTIONAL LAW

Until recently, most matters of constitutional law heard in the courts concerned the division of powers between the federal and provincial levels of government. The Canadian Bill of Rights was not part of the constitution of Canada but was considered a quasi-constitutional document because it automatically applied to all federal (but NOT provincial) laws, unless expressly excluded. However, because it was a mere act of Parliament, it was widely regarded as lacking "teeth" and so did not have the same effect in protecting civil liberties as the U.S. Bill of Rights has. In the U.S., most constitutional cases involve the Bill of Rights.

Since April, 1982 the Canadian Charter of Rights and Freedoms has been part of the Canadian constitution and has generated hundreds of cases. A large proportion of these cases has arisen in the context of criminal charges and trials but are nonetheless civil law problems in substance because they involve an individual seeking redress in the courts against the state for infringing his rights. The redress may involve the quashing of a criminal conviction, exclusion of certain evidence against him in a criminal trial or even damages. By section 24(1) of the Charter the court has the authority to award such remedy "as the court considers appropriate and just in the circumstances." Although it is in substance a civil challenge in the context of a criminal trial, the court hearing the criminal charge may deal with the constitutional issue raised.

Some of the provisions of the Charter may give rise to purely civil actions to protect such rights as mobility rights (s. 6), equality rights (s. 15) and language rights (ss. 17, 19, 20 and 23).

Unlike the Bill of Rights, the Charter applies to BOTH federal and provincial levels of government. The Charter, however, does not apply to private actions.

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